

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

ZACHARY COZART

PETITIONER

V.

NO. 3:18-CV-120-DMB-RP

ORA STARKS, et al.

RESPONDENTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Zachary Cozart's petition for a writ of habeas corpus is before the Court on the Report and Recommendation of United States Magistrate Judge Roy Percy. Doc. #14.

I
Procedural History

On or about May 21, 2018, Zachary Cozart, through counsel, filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Mississippi, challenging his 2014 conviction and sentence for child homicide. Doc. #1. On May 13, 2019, Cozart's counsel, Stewart Guernsey, moved to withdraw and asked that a new attorney be appointed to represent Cozart. Doc. #10. United States Magistrate Judge Roy Percy denied the request to appoint new counsel but allowed Guernsey to withdraw "on the condition that ... Mr. Cozart returns to the court the acknowledgment that will be mailed to him along with a copy of this order at the address identified on the Mississippi Department of Corrections website." Doc. #12 at 3. The same day, the Court mailed Cozart a copy of the order and a form to acknowledge its receipt. Cozart did not return the acknowledgment.

On July 23, 2019, Judge Percy issued a show cause order, with another acknowledgement form attached, instructing Cozart "to execute and return the enclosed acknowledgment no later than August 6, 2019, to indicate that he intends to proceed with the subject litigation." Doc. #13.

The show cause order with the acknowledgement form was mailed to Cozart that day. Again, Cozart did not return the acknowledgment.

Almost a year later, on July 21, 2020, Judge Percy issued a Report and Recommendation (“R&R”) recommending that Cozart’s case be “dismissed without prejudice for failure to prosecute and failure to comply with an order of the court under Fed. R. Civ. P. 41(b).” Doc. #14 at 1. The R&R further provided:

The plaintiff must acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the clerk of the court within fourteen (14) days of this date. *Failure to comply with the requirements of this paragraph may lead to dismissal of this lawsuit under Fed. R. Civ. P. 41(b) for failure to prosecute the claim and for failure to comply with an order of the court.*

Id. at 1–2. Despite this warning, Cozart did not return the acknowledgement or file objections to the R&R.

II **Analysis**

Under 28 U.S.C. § 636(b)(1)(C), “[a] judge of the court shall make a de novo determination of those portions of the report ... to which objection is made.” “[W]here there is no objection, the Court need only determine whether the report and recommendation is clearly erroneous or contrary to law.” *United States v. Alaniz*, 278 F. Supp. 3d 944, 948 (S.D. Tex. 2017) (citing *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989)). The Court, having reviewed the R&R, concludes that it is neither clearly erroneous nor contrary to law. Accordingly, the R&R will be adopted as the order of the Court, and Cozart’s petition will be dismissed without prejudice.

III **Conclusion**

The July 21, 2020, Report and Recommendation [14] is **ADOPTED** as the order of this Court. Cozart’s petition [1] is **DISMISSED without prejudice**.

SO ORDERED, this 29th day of September, 2020.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE